

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

)	Civil Action No. 2-18-cv-492
JOYCE MUSIC & BUD MUSIC,)	
Plaintiffs,)	
v.)	
)	
TRACI M CLEMENS, ADM ESTATE OF JAMES MUSIC)	
TRACI M CLEMENS, ADM ESTATE OF SUNI MUSIC)	
CYNTHIA NOBLE,)	
)	
Defendants.)	

NOTICE OF REMOVAL

Defendant Cynthia Noble, through her attorney, hereby respectfully submits this Notice of Removal for the purpose of removing the above-entitled action from the COURT OF COMMON PLEAS, PROBATE DIVISION, FRANKLIN COUNTY, OHIO, to the United States District Court for the SOUTHERN District of OHIO EASTERN DIVISION, and as grounds therefore state:

1. CYNTHIA NOBLE has joined in a civil action commenced against her daughter's estate, by beneficiaries of the James Music estate, claiming rights as a beneficiary under life insurance contracts issued by Kokosing Construction Company Inc., issued by Hartford Life and Accident Insurance Company, under ERISA.
2. Defendant CYNTHIA NOBLE first entered this action when filing a NOTICE OF APPEARANCE MEMORANDUM CONTRA on May 3, 2018. All previous pleadings were served on the Defendant Estates, but not on her personally. A copy of the Reply Brief indicating the date of first service upon her is attached hereto.
3. The defendant estates were served with EXCEPTIONS TO PARTIAL ACCOUNT on March 21, 2018, also attached hereto.

4. In their exceptions, Plaintiffs assert that they have been denied death benefits to which they claim to be entitled. The death benefits to which Plaintiff's claims relate are alleged to have been due under a benefit plan (the Plan) sponsored by Decedent James Music's employer, Kokosing Construction Company Inc., issued by Hartford Life and Accident Insurance Company.

6. The Plan is an employee welfare benefit plan governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C.A. §§ 1001 et seq. *See* 29 U.S.C.A. § 1002(1)(A) ("employee welfare benefit plan" regulated by ERISA includes employer-sponsored program providing death benefits).

7. ERISA pre-empts all state law claims alleged in Plaintiffs' Complaint with respect to the Plan. 29 U.S.C.A. § 1144(a); *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 103 S. Ct. 2890, 77 L. Ed. 2d 490 (1983); *Kelso v. General American Life Ins. Co.*, 967 F.2d 388, 390 (10th Cir. 1992). ERISA provides the exclusive remedies for resolution of claims relating to employee benefit plans. 29 U.S.C.A. § 1132(a)(1)(B); *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 54, 107 S. Ct. 1549, 95 L. Ed. 2d 39 (1987) ("ERISA's civil enforcement remedies were intended to be exclusive").

8. Because of the breadth of ERISA's preemptive provisions, a cause of action filed in state court which is pre-empted by ERISA and comes within the scope of 29 U.S.C.A. § 1132(a)(1) is removable to this Court under 28 U.S.C.A. § 1441(b) as an action arising under federal law, even though the ERISA nature of the claim does not appear on the complaint's face. This principle is known as the "complete preemption doctrine." *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 107 S. Ct. 1542, 95 L. Ed. 2d 55 (1987).

9. Therefore, this Court has original federal question jurisdiction over this action pursuant to 28 U.S.C.A. § 1331 (general federal question jurisdiction provision), and 29 U.S.C.A. § 1132(e) (ERISA jurisdiction provision). Federal question jurisdiction arises because Plaintiff's claims relate to an employee welfare benefit plan and thus are pre-empted by ERISA, as discussed above. As a civil action founded on a claim or right arising under the laws of the United States, this action is properly removable to this Court pursuant to 28 U.S.C.A. § 1441(a) and (b).

10. Defendant will serve and certify service of copies of this Notice of Removal to Plaintiff and other Defendants as required by 28 U.S.C.A. § 1446(d).

11. A copy of this Notice of Removal will be filed with the Office of the Clerk of the COURT OF COMMON PLEAS, PROBATE DIVISION, FRANKLIN COUNTY, OHIO as is required by 28 U.S.C.A. § 1446(d).

WHEREFORE, Defendant Cynthia Noble requests that the above-captioned action now pending in the COURT OF COMMON PLEAS, PROBATE DIVISION, FRANKLIN COUNTY, OHIO, be removed to this Court.

DATED this 16th day of May 2018.

Respectfully submitted,

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